Supreme Court, U. S.
FILED
JUL 16 1975
MICHAEL RODAK, JR., CLERK

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1974

## No. 74-1287

ROBERT WEINSTEIN, et al.,
*Petitioners,*

vs.

HOWARD E. BRADFORD, et al.,
*Respondents.*

## BRIEF OF THE STATE OF CALIFORNIA AMICUS CURIAE IN SUPPORT OF PETITIONERS

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**Codes**

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### INTEREST OF AMICUS CURIAE

As amicus the State of California addresses the second of the three issues raised in the petition for writ of certiorari, namely, the application of the decision in *Preiser v. Rodriguez,* 411 U.S. 475 (1973).

The State's interest is generated by reason of its concern in the management of a prison population of approximately 20,000 felons. In 1974 over 4,000 male felons were paroled. In addition, during the same

year, approximately 20,000 male felons were interviewed for release date consideration and, of these, approximately 5,000 were granted release dates. The prospective administrative parole consideration caseload for the calendar year 1975 (estimated from 1974 figures) would exceed 7,000.

The State of California is entitled to ". . . the first opportunity to correct the errors made in the internal administration of [its prison and parole system]." *Preiser v. Rodriguez,* at 492. Improper denial of parole consideration may be corrected by state habeas corpus. If the prisoner is not afforded this relief he may then file an application for habeas corpus in federal court. Proceedings under Title 42, U.S.C. §1983 would improperly bypass this orderly process.

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## SUMMARY OF ARGUMENT

Parole consideration concerns the alternatives of release from prison or continued confinement. A federal court has jurisdiction to consider the legality of continued confinement only in the context of federal habeas corpus proceedings. Any challenge to continued confinement, based on an assertion that parole was withheld, may only be brought by a habeas corpus application. That the challenge is framed as a demand for due process in parole consideration procedures does not alter the fact that the challenger's only interest is release from prison.



## ARGUMENT

In *Preiser v. Rodriguez, supra,* 411 U.S. 475, 489-90, 500 (1973), this Court found that it would frustrate explicit congressional intent to permit state prisoners to challenge the fact or length of their confinement under Title 42, U.S.C. § 1983. *Rodriguez* holds that the sole federal remedy is habeas corpus where the challenge arises from state administrative action affecting duration of confinement. The United States Court of Appeals for the Fourth Circuit, however, has concluded that *Rodriguez* was inapplicable as "[t]he sole thrust of their [the prisoners] complaints is a constitutional attack on the procedures of the respective parole boards [and] . . . not the right to parole but the right to procedural due process in the consideration of parole."

It is undisputed that the interest of a prisoner in parole consideration is an interest in release from confinement. Continued confinement, after assertedly invalid parole consideration procedures, is the cause at issue. Without such complaint no case or controversy would exist.

A challenge to confinement is a habeas corpus matter. The available relief is a writ requiring either correction of the illegality or release from custody. See, *Whiteley v. Warden,* 401 U.S. 560, 569 (1971); *Reck v. Pate,* 367 U.S. 433, 444 (1961). The nature of the requested relief and the prisoner's interest cannot be changed simply by an assertion that only the procedures are being challenged and not the confinement itself. "It would wholly frustrate explicit con-

gressional intent to hold that the respondents in the present case could evade this requirement [of exhaustion of state remedies] by the simple expedient of putting a different label on their [requested relief]." *Preiser v. Rodriguez,* at 489-490.

In *Rodriguez,* at 489, counsel for respondents acknowledged that a state prisoner's challenge to his underlying conviction and sentence was limited to habeas corpus. Such an acknowledgment could not have been avoided by the assertion that the challenge was to a denial of procedural due process at trial and not to the conviction itself. Nevertheless, the Court of Appeals in the instant case attempts to hold that a prisoner may attack the parole processes without also challenging the confinement without parole.

A challenge by a state prisoner to parole consideration procedures falls within the holding of *Rodriguez.* Whether, and if so, what process is due at a particular parole proceeding depends on the prisoner's interests which are at stake at that proceeding, e.g., *Morrissey v. Brewer,* 408 U.S. 471, 481-482 (1972). The inmate interest at stake at a parole consideration proceeding is in being released on parole. It is only this interest which could afford a basis for determining what process, if any, is due at such proceedings. A claim that due process is denied by parole consideration procedures which does not carry with it a further claim that the result of those procedures is invalid under the Constitution, fails to present the only interest which would constitute a basis for a claim and to which due process might attach.



## CONCLUSION

Amicus submits that when a state prisoner challenges parole consideration proceedings on procedural due process grounds, he is limited to habeas corpus as the sole federal remedy. Title 42, U.S.C. § 1983 is unavailable.

Dated, San Francisco, California,
July 15, 1975.

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